IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10937 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE SWASTIK JINNING & PRESSING FACTORY - Petitioner(s)
Versus
COLLECTOR & 1 - Respondent(s)

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Appearance :
MR BD KARIA for Petitioner(s) : 1,
MR LR PUJARI for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/03/2007

ORAL JUDGMENT

1. Mr.B.D. Karia, learned counsel for the petitioner and Mr.L.R. Pujari, learned Assistant Government Pleader for

the respondents - State.

2. By this writ petition, the petitioner seeks to challenge the correctness, validity and propriety of the order dtd.22/9/1994 passed by the Collector, Surendranagar in Case No.Land-2-S.C.No.10/93-94 and order dtd.31/7/1995 passed by the Additional Principal Secretary (Appeals), Revenue Department in Case No.SRD/Land/SNR/85/94, where-under, the allotment of the land earlier made in favour of the petitioner was cancelled on the ground that the petitioner committed breach of condition Nos.2 and 11 of the order of allotment.

3. The petitioner applied for certain land for industrial purposes, The State Government being satisfied with the intention of the present petitioner, allotted 1 Acre and 15 Gunthas of land out of Survey No.1173 of Village Malvan, Taluka Dhrangadhra, District Surendranagar, by its order dtd.3/12/1973. It appears that somewhere in the year 1992-93, the petitioner made an application to the Collector for change of the use and immediately thereafter, notice was issued to the petitioner to show cause that as he had committed breach of condition Nos.2, 11 and 12, why the allotment be not cancelled.

4. Condition No.2 provides that the petitioner would be

liable to pay early tax and would also be liable to pay cess etc. since 1/8/1973. Condition No.11 says that within a period of two years, the petitioner would raise construction and would start his work. Condition No.12 observes that fees for measurement of the land will have to be paid by the petitioner. The petitioner appeared before the authority and submitted that he had not committed any breach of the terms and conditions, nor violated any covenants, that for some bonafide lapse on his part, he could not deposit the tax / cess, but after receiving the notice, he immediately had deposited the said tax and cess with interest.

5. After hearing the parties, the learned Collector held that the petitioner had committed breach of condition Nos.2 and 11, he accordingly cancelled the allotment and directed resumption of the land. The appellate authority also approved the order, therefore, the petitioner is before this Court.

6. Mr.Karia, learned counsel for the petitioner submits that the observations made by the authorities that the petitioner violated condition No.11 are patently illegal and runs contrary to the records. According to him, the report of the Talati-cum-Mantri was that the property was

lying unused since 1977 and even from the other reports, it would appear that the property was lying unused since 1976. His submission is that it is nobody's case that the construction was not raised within two years and the property was not put to use. He submits that the property was used as a ginning and pressing factory upto the year 1976, but, thereafter, the property could not be used for the said purpose. Regarding alleged violation of condition No.2, he submits that non-payment of the tax and cess would only be a technical default and on payment of the said amount with interest, the said default would stand abated. His submission is that non-payment of the money in time, has not caused any revenue loss to the State and if there was any loss, the same has been compensated by the petitioner by depositing the amount of tax and cess with interest.

7. Mr.L.R. Pujari, learned Assistant Government Pleader for the State on the other hand submits that moment it came to the notice of the authorities that the property was not used for the purpose for which it was allotted and the petitioner did not pay the tax right in time in accordance with condition No.2, a notice was issued. According to him, deposit of the tax and cess after the

notice, would not provide any solace to the petitioner. In relation to violation of condition No.11, he submits that if the two authorities have found that the property was not used for the purpose for which it was allotted, then this court should not interfere in the matter.

8. So far as the violation of condition No.2 is concerned, I must immediately agree with the submissions made by Mr.Karia, learned counsel for the petitioner. True it is that for a period of 20 years tax and cess was not paid but no action was also taken by the authorities for a period of 20 years. The Moment petitioner came to know that he was required to pay and deposit tax then not only he deposited the cess and tax, but also paid interest to the Government to compensate any loss suffered by the State. Even otherwise, the breach of condition No.2 cannot be allowed to lead to the capital punishment of cancellation of allotment and resumption of land, however, breach of condition No.11 if is proved, then it must lead to the serious consequences. For proving that there was breach of condition No.11, the State was required to prove that no construction was raised within two years and within the said period, the property was not used for the purpose for which it was allotted. From

the orders passed by the authorities, it would clearly appear that they had recorded a finding that for a period of almost 10 years, the property was not used as a ginning and pressing factory, the order was passed in the year 1995. If this was the finding, then it must be held that the property was not used as ginning and pressing factory subsequent to the year 1983-84. If the report of the Talati-cum-Mantri dtd.18/2/1993 is taken into consideration, it would appear that the property was not used as a factory for last 17 years, which would mean that the ginning and pressing factory was closed somewhere in the year 1976 or 1977. If it is nobody's case that the petitioner did not raise the construction and did not use the property as ginning and pressing factory from 1975 onwards or for some years, then the finding relating to violation of condition No.11 could not be recorded.

9. Unfortunately, in the zeal to cancel the allotment, the authorities did not look into the real position, nor did they make proper inquiries that whether the reports are supporting the case of the petitioner or leveling allegations against the authorities. The orders passed by the Deputy Collector and confirmed by the authority are

wrong and are based on misconception of law and on a foundation which was never founded. The orders deserve to and are accordingly quashed.

10. Before parting with the cause, I must say that while allotting the land for industrial purposes, the State Government should not incorporate a condition that the use of the land can be changed with the permission of the Government. It is common knowledge that for industrial purposes, the land is allotted for a song's price and if the same land is used for some other purpose than it will provide a fortune to the allottee. If the petitioner wants to keep the land in question for industrial purpose, he may do so, but in any case, he would not be entitled to convert the use of the land. The petition is allowed. Rule is made absolute to the extent indicated above. No costs. A copy of this order be sent to the Chief Secretary.

(R.S. GARG, J.)

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